STATE OF MICHIGAN

COURT OF APPEALS

EDWARD M. ANGELUSKI,

Plaintiff-Appellant,

v

L. R. NELSON CORPORATION, KINGSWAY BUILDERS, INC., CUMMINGS CONDOMINIUM MANAGEMENT, INC., WHISPERWOOD CONDOMINIUM ASSOCIATION, and LINDEN NURSERY TRANSCAPES, INC.,

Defendants-Appellees.

UNPUBLISHED
March 19, 1999

No. 197867
Genesee Circuit Court
LC No. 95-036916 NI

Before: MacKenzie, P.J., and Gribbs and Wilder, JJ.

PER CURIAM.

In this personal injury action, plaintiff appeals by leave granted the trial court's order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On April 26, 1994, at approximately 1:30 p.m., plaintiff left his condominium and walked down the sidewalk toward his van that was parked in the driveway. As he approached the van, he cut across a corner of the front lawn, and tripped and fell on a lawn sprinkler head that had not retracted into the ground. The sprinkler head was approximately eight inches in diameter, and was raised approximately four inches above the ground. Plaintiff sustained a fractured fibula as a result of the fall. Plaintiff filed a five-count complaint against defendants alleging negligence and products liability claims arising out of the defective sprinkler head. All defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the danger posed by the raised sprinkler head was open and obvious, obviating any duty they owed to plaintiff. Plaintiff responded that the open and obvious doctrine was inapplicable because it only applied to the duty to warn and claims involving simple tools, neither of which were raised in this case. After a hearing, the trial court granted defendants' motions and dismissed the case on the basis that the condition was open and obvious, and therefore, defendants did not owe plaintiff a duty of care.

On appeal, plaintiff contends that the trial court erred in granting summary disposition to defendants based on the open and obvious doctrine. We disagree. We review a trial court's grant of summary disposition under MCR 2.116(C)(10) de novo. *Ruff v Isaac*, 226 Mich App 1, 4; 573 NW2d 55 (1997). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Id.* In reviewing such a motion, a trial court must consider the pleadings, affidavits, depositions, and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The trial court may grant the motion for summary disposition under MCR 2.116(C)(10) where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

In premises liability actions, a property owner must exercise reasonable care to protect invitees[1] from an unreasonable risk of harm caused by a dangerous condition on the land that the landowner knows or should know the invitees will not discover, realize, or protect themselves against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). However, land owners owe no duty of care to invitees where the alleged risk is open and obvious, unless the landowner should anticipate harm, or the risk of harm remains unreasonable, despite the obvious nature of the condition. *Id.*; *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 97; 485 NW2d 676 (1992). A danger is open and obvious if an average user of ordinary intelligence could have discovered the danger and risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).[2]

In this case, plaintiff acknowledged that the raised sprinkler head was visible upon casual inspection. He further admitted that he was familiar with the area where he fell and there was nothing obstructing his view of the sprinkler head, but he was simply not looking at the ground. See *Bertrand*, *supra* at 615, 619, 621; *DeBoard v Fairwood Villas Condominium Ass'n*, 193 Mich App 240, 242-243; 483 NW2d 422 (1992). Plaintiff additionally stated that he had traveled the same path to his driveway over one hundred times, and he knew that the sprinkler head often remained above ground. In fact, plaintiff was a board member of the Whisperwood Condominiums for several years, and was involved in a committee responsible for correcting the deficiencies with the sprinkler head. Furthermore, plaintiff's wife and daughter both testified that the sprinkler head was not difficult to see, and they avoided tripping over it by simply looking down when they walked. Viewing this evidence in a light most favorable to plaintiff, we hold that the trial court correctly determined that the harm presented by the raised sprinkler head was open and obvious. Accordingly, defendants Whisperwood and Cummings did not owe a duty of care to plaintiff, and summary disposition was appropriate on the premises liability claims.

In products liability actions, application of the open and obvious doctrine is limited to risks associated with simple tools or products. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 393; 491 NW2d 208 (1992); *Adams v Perry Furniture Co (On Remand)*, 198 Mich App 1, 11; 497 NW2d 514 (1993). A manufacturer or seller of a simple product has no duty to warn of the potentially dangerous characteristics of a product that are readily apparent or visible upon casual inspection and that are reasonably expected to be recognized by the average user of ordinary intelligence. *Id.* at 385. In addition, manufacturers of simple products are not required to

protect users from dangers that are obvious and inherent in the utility of a product. *Mallard v Hoffinger Industries, Inc (On Remand),* 222 Mich App 137, 142, 145; 564 NW2d 74 (1997). Thus, where simple tools are involved, a manufacturer or seller has no duty to warn or protect against dangers obvious to all. *Id.*; *Fisher v Johnson Milk Co, Inc*, 383 Mich 158, 160; 174 NW2d 752 (1970).

A simple tool is an otherwise nondefective product, all of whose essential characteristics are fully apparent. *Glittenberg*, *supra* at 385, 390. In *Glittenberg*, our Supreme Court cited the following passage from *Jamieson v Woodward & Lothrup*, 101 US App DC 32, 25, 37; 247 F2d (1957), cert den 355 US 855 (1957), the seminal case on "simple tools," where the Court defined a simple tool:

> Where a manufactured article is a simple thing of universally known characteristics, not a device with parts or mechanism, the only danger being not latent but obvious to any possible user, if the article does not break or go awry, but injury occurs through a mishap in normal use, the article reacting in its normal and foreseeable manner, the manufacturer is not liable for negligence. [*Id.* at 144.]

Michigan courts have categorized products as simple tools when one or both of the following conditions exist: (1) the products are not highly mechanized, thus allowing the users to maintain control over the products; and (2) the intended use of the products does not place the users in obviously dangerous conditions. *Raines v Colt Industries, Inc*, 757 F Supp 819, 825 (ED Mich, 1991). The Courts have deemed a wide array of otherwise nondefective products "simple tools."[3] Determination of the obvious character of a product-connected danger is objective. *Glittenberg*, *supra* at 391. The focus is the typical user's perception and knowledge and whether the relevant condition or feature that creates the danger associated with use is fully apparent, widely known, commonly recognized, and anticipated by the ordinary user or consumer. *Id.* at 391-392.

In the present case, the trial court relied on the open and obvious doctrine to dismiss this case against the product manufacturer and seller, without first determining that the sprinkler head was a simple tool. However, we find that a lawn sprinkler head is a simple tool as a matter of law. It is a standard product with fully apparent and widely recognized characteristics. The product is not highly mechanized and the average user may maintain reasonable control over its use and anticipate potential dangers. Moreover, the danger posed by the raised sprinkler head was not latent, but obvious to plaintiff and other possible users. Thus, given plaintiff's undisputed knowledge of the location of the sprinkler head and its recurrent failure to retract into the ground, as well as his direct involvement in remedying the problems associated with the sprinkler head, we conclude that defendants had no duty to protect plaintiff from the injuries he sustained. *Mallard, supra* at 145. Accordingly, we hold that the trial court properly granted summary disposition to defendants L.R. Nelson, Kingsway Builders, and Linden Nursery on plaintiff's product liability claims.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs

/s/ Kurtis T. Wilder

[1] The parties do not dispute that plaintiff was an invitee on the premises at the time he was injured.

[2] Contrary to plaintiff's claim, Michigan law does not limit the applicability of the open and obvious doctrine to cases wherein a duty to warn is alleged. In *Riddle v McLouth Steel Products Corp,* 440 Mich 85, 96; 485 NW2d 676 (1992), our Supreme Court noted that where the condition is open and obvious, "an invitor owes no duty to protect or warn the invitee. . . ." Subsequently, in *White v Badalamenti,* 200 Mich App 434, 437; 505 NW2d 8 (1993), this Court cited *Riddle* for the proposition that "a possessor of land owes no duty regarding open and obvious dangers." Similarly, in *Bertrand v Alan Ford, Inc,* 449 Mich 606, 610 n 2; 537 NW2d 185 (1995), our Supreme Court stated that a condition which was open and obvious, "does not ordinarily require precautions, or even warning against dangers."

[3] See e.g,. *Glittenberg, supra* at 384-385 (above-ground pool); *Fisher, supra* at 158 (wire bottle carrier); *Adams, supra* at 1 (butane lighter); *Viscogliosi v Montgomery Elevator Co*, 208 Mich App 188; 526 NW2d 599 (1994) (moving walkway at airport); *Raines, supra* at 819 (semi-automatic pistol). In contrast, examples of products that did not qualify as simple products include *Coger v Mackinaw Products Co*, 48 Mich App 113; 210 NW2d 124 (1973) (log splitting machine), and *Byrnes v Economic Machinery Co*, 41 Mich App 192; 200 NW2d 104 (1972) (labeling machine).